IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.80 OF 2007
IN
SUIT NO.2792 OF 2000

Dr. Vijay S. Shing & Ors. ...Plaintiffs
Vs.
U.P.Co-operative Spinning Mills Ltd. ...Defendant
And
The Court Receiver ...Respondent

Mr.Janak Dwarkadas with Mr. Zal Andhyarujina with N.R. Modi with Deepali Thakor i/b. Rustamji Ginwala for Plaintiff in Suit No.2792 of 2000(JONo.368 of 2006) & Chamber Summons No.80 of 2007
Mr. Nooruddin Dhilla i/b. Hariani & Co. for Plaintiffs in Suit No.1390 of 2003(JO No.357 of 2006)
Mr.Utkarsh Tewari instructed by Shantilal & Co. for the Defendant No.1.
Mr.Rakesh Upadhayay a/w.Gajendra Machha for the Applicant Harihar Bhave instructed by Bhave & Co. for State Bank of India
Mr.Amit Vyas with Mr. Marvyen Fernandes i/b. Rajani Associate for Plaintiff in JO 356 of 2006
Mr.S.N.Vimadalal for M/s.S.R.Tattles
Mr. D.V. Deokar 1st Assistant
The Court Receiver present

CORAM: SMT. ROSHAN DALVI, J.
DATED: 19TH JANUARY, 2007

P.C.

1. The Plaintiff has taken out this Chamber Summons for reimbursement of the amount by the Court Receiver to the extent of Rs.1,06,82,940/- paid by the Plaintiffs to one M/s. Security & Personnel Services Pvt. Limited towards their bills for deployment of Security Guards at the various mills of the Defendant No.1 Federation, out of the sale proceeds of the movable assets of the two mills of Federation lying deposited with the Court Receiver in the suit account or for investment in any fixed deposit. The Plaintiff has also prayed for an order against the Court Receiver to pay all outstanding bills and dues of the said Security services.

2. The Plaintiffs claim that they have incurred the aforesaid amount towards security charges for the security guards posted by Court Receiver to guard the premises of the mills of the first Respondent Federation. The Plaintiffs claim that under the Division Bench order dated 13th January, 2003 they are entitled to be reimbursed these expenses. The Division Bench order is annexed as Exhibit-A to the Chamber Summons. In that order whilst directing the Court Receiver to take physical possession of several mills of the Federation and ordering disbursement by way of VRS to the employees of first Defendant Federation, several incidental orders were passed. The direction in Clause 4 (iv)(v) of the

said order shows directions as regards the sale proceeds received by the Court Receiver. They run thus:

> (iv) The sale proceeds so realized by the Court Receiver, after deduction of all costs, charges and expenses of sale, shall be retained by the Court Receiver and invested until further orders from the Court of the learned Single Judge.
>
> (v) The Plaintiffs/Respondents shall initially bear costs, charges and expenses of sale and shall be reimbursed the same in full out of the sale proceeds by the Court Receiver on first priority basis.

A reading of these clauses show that the cost charges and expenses which are contemplated are of the sale of the mills and the reimbursement is to be made out of those sale proceeds. There is no direction for reimbursement of the cost charges and expenses of keeping security guards at the premises of the mills for which the Court Receiver was appointed.

3. It is argued on behalf of the Plaintiff that the expenses of the Security guards are to safeguard and secure the suit premises. The Plaintiffs have incurred them on behalf of and

in the place of the Court Receiver. Hence, such costs charges and expenses reimbursable. The directions in the order dated 13th January, 2003 do not specify the reimbursement of all the costs, charges and expenses. What the Plaintiffs are directed to bear are the costs, charges and expenses of the sale and not for guarding the properties. Hence, the Plaintiffs are not entitled to reimbursement of the amount calculated unilaterally by them as the charges they have incurred.

4. Earlier today the Registrar, Handloom and Textile Co-operative Societies, Uttar Pradesh, who has been appointed Liquidator of first Defendant Federation, has been allowed to take over the properties, effects and actionable claims of the Society and to sell its movable and immovable properties subject to his depositing the principal amount claimed by the Plaintiffs in this Suit. Once the winding up proceedings of the 1st Defendant Federation has commenced and the Liquidator is appointed, no Suit against the Federation in winding up can be proceeded with. The entire purpose of liquidation proceedings would be frustrated if the parties are allowed such expenses to be reimbursed pending the sale and payment to all the creditors of the 1st Defendant proportionately.

5. Hence, under the said order Court Receiver is directed not to initiate any further steps and proceedings without the permission of the Registrar as the Liquidator in the Suit. Consequently the Court Receiver cannot be directed to reimburse the Plaintiffs or to pay any outstanding bills of the Security Guards appointed by the Court Receiver.

6. Despite the appointment of the security guards, the Plaintiffs themselves in the affidavit in reply to the Judges Order No.368 of 2006 in the above suit mentioned about illegal activities being carried out in the Mill premises, a foundation stone of the school having been laid in one of the Mills and illegal activities being permitted in the premises of another mill of the first defendants despite the appointment of the Court Receiver.

7. Despite the Plaintiffs having paid the security guards their properties have yet not been fully protected. The purpose of the appointment itself is frustrated. The payment to the security guards to the extent claimed by the Plaintiffs, are to be proved by the Plaintiffs. It is not a liquidated debt.

8. No order can be passed for reimbursement of any amount by the Court, or the Court Receiver.

9. The Court Receiver's Report dated 18th January, 2007 is disposed of accordingly.

10. This order is stayed for 3 weeks.

(SMT.ROSHAN DALVI, J.)